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DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement: United States v. TransDigm Group Incorporated

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. TransDigm Group Incorporated, Civil Action No. 1:17-cv-2735. On December 21, 2017, the United States filed a Complaint alleging that TransDigm Group Incorporated's (TransDigm) February 2017 acquisition of SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, "SCHROTH") from Takata Corporation violated Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires TransDigm to divest the entirety of SCHROTH.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.gov/atr and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the

Federal Register. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202-307-0924).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
450 5th Street, N.W., Suite 8700
Washington, D.C. 20530,

Plaintiff,

v.

TRANSDIGM GROUP INCORPORATED
1301 East 9th Street, Suite 3000
Cleveland, Ohio 44114,

Defendant.

Civil Action No.: 1:17-cv-2735
Judge: Amy Berman Jackson

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action for equitable relief against defendant TransDigm Group Incorporated ("TransDigm") to remedy the harm to competition caused by TransDigm's acquisition of SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. from Takata Corporation ("Takata"). The United States alleges as follows:

I. NATURE OF THE ACTION

1. In February 2017, TransDigm acquired SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, "SCHROTH") from Takata. TransDigm's AmSafe, Inc. ("AmSafe") subsidiary is the world's dominant supplier of restraint systems used on commercial airplanes. Prior to the acquisition, SCHROTH was

AmSafe's closest competitor and, indeed, its only meaningful competitor for certain types of restraint systems.

2. Restraint systems are critical safety components on every commercial airplane seat that save lives and reduce injuries in the event of turbulence, collision, or impact. There are a wide range of restraint systems used on commercial airplanes, including traditional two-point lapbelts, three-point shoulder belts, technical restraints, and more advanced "inflatable" restraint systems such as airbags. The airplane type, seat type, and seating configuration dictate the proper restraint type for each airplane seat.

3. Prior to the acquisition, SCHROTH was a growing competitive threat to AmSafe. Until 2012, AmSafe, the long-standing industry leader, was nearly unrivaled in the markets for restraint systems used on commercial airplanes. Certification requirements and other entry barriers reinforced AmSafe's position as the dominant supplier to the industry. However, beginning in 2012, after being acquired by Takata, SCHROTH embarked on an ambitious plan to capture market share from AmSafe by competing with AmSafe on price and heavily investing in research and development of new restraint technologies. Over the next five years, the increasing competition between AmSafe and SCHROTH resulted in lower prices for restraint system products for commercial airplanes and the development of innovative new restraint technologies such as inflatable restraints. TransDigm's acquisition of SCHROTH removed SCHROTH as an independent competitor and eliminated the myriad benefits that customers had begun to realize from competition in this industry.

4. Accordingly, TransDigm's acquisition of SCHROTH is likely to substantially lessen competition in the development, manufacture, and sale of restraint systems used on

commercial airplanes worldwide, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. DEFENDANT AND THE TRANSACTION

5. TransDigm is a Delaware corporation headquartered in Cleveland, Ohio. TransDigm operates as a holding company and owns over 100 subsidiaries. Through its subsidiaries, TransDigm is a leading global designer, manufacturer, and supplier of highly engineered airplane components. TransDigm's fiscal year 2016 revenues were approximately $3.1 billion. TransDigm is the ultimate parent company of AmSafe, a Delaware corporation headquartered in Phoenix, Arizona. AmSafe develops, manufactures, and sells a wide range of restraint systems used on commercial airplanes. AmSafe had global revenues of approximately $198 million in fiscal year 2016.

6. Takata is a global automotive and aerospace parts manufacturer based in Japan. Takata was the ultimate parent entity of SCHROTH Safety Products GmbH, a German limited liability corporation base in Arnsberg, Germany, and Takata Protection Systems, Inc., a Colorado corporation based in Pompano Beach, Florida. SCHROTH Safety Products and Takata Protection Systems collectively had approximately $37 million in revenue in fiscal year 2016.

7. On February 22, 2017, TransDigm completed its acquisition of SCHROTH Safety Products and substantially all the assets of Takata Protection Systems from Takata for approximately $90 million. Because of the way the transaction was structured, it was not required to be reported under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a. After the acquisition was completed, the Takata Protection Systems assets were incorporated as SCHROTH Safety Products LLC.

III. JURISDICTION AND VENUE

8. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain TransDigm from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

9. TransDigm sells restraint systems used on commercial airplanes throughout the United States. It is engaged in the regular, continuous, and substantial flow of interstate commerce, and its activities in the development, manufacture, and sale of restraint systems used on commercial airplanes have had a substantial effect upon interstate commerce. The Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. TransDigm has consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

IV. TRADE AND COMMERCE

A. Industry Overview

11. Commercial airplanes are fixed-wing aircraft used for scheduled passenger transport. Restraint systems used on commercial airplanes are critical safety devices that secure the occupant of a seat to prevent injury in the event of turbulence, collision, and impact.

12. Restraint systems used in the economy and premium cabins in commercial airplanes vary based on the airplane type, seat type (*e.g.*, economy, premium, crew, "lie-flat," etc.), and seating configuration of the airplane.

13. Restraint systems used on commercial airplanes come in two primary forms: (i) conventional belt systems with two or more belts or "points" that are connected to a central buckle; or (ii) inflatable systems with one or more airbags that may be installed in combination with a conventional belt system. The airbags can be installed either within the belt itself (called an "inflatable lapbelt") or in a structural monument within the airplane (called a "structural mounted airbag").

14. Economy cabin seats typically require two-point lapbelts, though other restraint systems such as inflatable restraint systems may be necessary in limited circumstances to comply with Federal Aviation Administration ("FAA") safety requirements.

15. Premium cabin seats come in many different seating configurations, and passenger restraint systems used in premium cabin seats vary as well. Premium cabin restraint systems include two-point lapbelts, three-point shoulder belts, and inflatable restraint systems. While two-point lapbelts and three-point shoulder belts are used widely throughout the premium cabins, the use of inflatable restraint systems is more common in first-class and other ultra-premium cabins.

16. Flight crew seats on commercial airplanes require special restraint systems called "technical" restraints. Technical restraints are multipoint restraints with four or more belts that provide additional protection to the flight crew.

17. Restraint systems typically are purchased by commercial airlines and airplane seat manufacturers. Because certification of a restraint system is expensive and time-consuming, once a restraint system is certified for a particular seat and airplane type it is rarely substituted in the aftermarket for a different restraint system or supplier. Accordingly, competition between suppliers of restraint systems generally only occurs when a customer is designing a new seat or purchasing a new seat design, either when retrofitting existing airplanes or purchasing new airplanes.

B. Industry Regulation and Certification Requirements

18. All commercial airplanes must contain FAA-certified restraint systems on every seat installed on the airplane. The process for obtaining FAA certification is complex and involves several distinct stages.

19. Before selling a restraint system, a supplier of airplane restraint systems must first obtain a technical standard order authorization ("TSOA"). A TSOA certifies that the supplier's restraint system meets the minimum design requirements of the codified FAA Technical Standard Order ("TSO") for that object, and that the manufacturer has a quality system necessary to produce the object in conformance with the TSO. To obtain a TSOA for a restraint system, a supplier must test its restraint system for durability and other characteristics. Once a TSOA is issued for the restraint system, the supplier must then obtain a TSOA for the entire seat system—*i.e.*, the seat and belt combination. To obtain a TSOA for the seat system, the seat system must successfully complete dynamic crash testing to demonstrate that the seat system meets the FAA

required g-force and head-injury-criteria safety requirements. Dynamic crash-testing is expensive and can be cost prohibitive to potential suppliers. Once a supplier obtains a TSOA for the seat system, it must then obtain a supplemental type certificate, which certifies that the seat system meets the applicable airworthiness requirements for the particular airplane type on which it is to be installed.

20. Certain restraint system types such as inflatable restraint systems do not have a codified TSO and must instead satisfy a "special condition" from the FAA prior to manufacture and installation of the restraint system. In those circumstances, the FAA must first determine and then publish the terms of the special condition. Once the special condition is published, the supplier must then satisfy the terms of the special condition to install the object on an airplane.

V. RELEVANT MARKETS

21. AmSafe and SCHROTH compete across the full range of restraint systems used on commercial airplanes. However, restraint systems are designed for specific airplane configurations and seat types and are therefore not interchangeable or substitutable for different restraint systems. FAA regulations dictate which restraint system may be used for a particular airplane configuration and seat type. In the event of a small but significant price increase for a given type of restraint system, commercial customers would not substitute another restraint system in sufficient numbers so as to render the price increase unprofitable. Thus, each restraint system described below is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

22. The relevant geographic market for restraint systems used on commercial airplanes is worldwide. Restraint systems are marketed internationally and may be sourced economically from suppliers globally.

A. Relevant Market 1: Two-Point Lapbelts Used on Commercial Airplanes

23. A two-point lapbelt is a restraint harness that connects two fixed belts to a single buckle and restrains an occupant at his or her waist. Two-point lapbelts are used on nearly every seat in the economy cabins of commercial airplanes; they also are regularly used in the premium cabins. Commercial airline companies prefer lightweight two-point lapbelts in the economy cabins to save fuel costs, reduce CO_2 emissions, and provide convenience to their passengers. Two-point lapbelts are significantly less expensive than other restraint system types.

24. The market for the development, manufacture, and sale of two-point lapbelts used on commercial airplanes is already highly concentrated and has become significantly more concentrated as a result of TransDigm's acquisition of SCHROTH. Prior to the acquisition, there were only three significant suppliers of two-point lapbelts used on commercial airplanes: AmSafe, SCHROTH, and a third firm, a small, privately-held company that has been supplying two-point lapbelts for many years. Although a handful of other firms served the market, they only sell a negligible quantity of two-point lapbelts each year. AmSafe is by far the largest supplier of two-point lapbelts used on commercial airplanes, and serves the vast majority of major commercial airlines around the world. However, SCHROTH recently entered this market after developing a new, innovative lightweight two-point lapbelt and had emerged as AmSafe's most significant competitor as it aggressively sought to market its lapbelt to major international airline customers.

B. Relevant Market 2: Three-Point Shoulder Belts Used on Commercial Airplanes

25. A three-point shoulder belt is a restraint harness that restrains an occupant at his or her waist and shoulder. It consists of both a lapbelt component and shoulder belt (or sash) component. Three-point shoulder belts are widely used in the premium cabins of commercial

airplanes where the seating configurations often necessitate the additional protection provided by three-point shoulder belts.

26. The market for the development, manufacture, and sale of three-point shoulder belts used on commercial airplanes was already highly concentrated prior to the acquisition. In fact, AmSafe and SCHROTH were the only two significant suppliers of three-point shoulder belts used on commercial airplanes although a handful of other firms made a negligible quantity of sales each year. As with two-point lapbelts, AmSafe was the dominant supplier of three-point shoulder belts, and SCHROTH was aggressively seeking to grow its business at AmSafe's expense.

C. Relevant Market 3: Technical Restraints Used on Commercial Airplanes

27. Technical restraints are multipoint restraint harnesses (usually four or five points) that restrain an occupant at his or her waist and shoulders. Technical restraints consist of multiple belts that connect to a single fixed buckle—typically a rotary-style buckle. Technical restraints are used by the flight crew in commercial airplanes. The critical nature of the flight crew's responsibilities and the design of their seats necessitate the additional protections provided by technical restraints.

28. The market for the development, manufacture, and sale of technical restraint systems used on commercial airplanes was already highly concentrated and became significantly more concentrated as a result of the acquisition. Prior to the acquisition, there were only three significant suppliers of technical restraints used on commercial airplanes: AmSafe, SCHROTH, and a third firm, an international aerospace equipment manufacturer. Although a handful of other firms supplied technical restraints, they only sold a negligible quantity of technical

restraints each year. As with passenger restraints, AmSafe was the leading supplier of technical restraints, and SCHROTH was aggressively seeking to grow its business at AmSafe's expense.

D. Relevant Market 4: Inflatable Restraint Systems Used on Commercial Airplanes

29. Inflatable restraint systems, which include both inflatable lapbelts and structural mounted airbags, are restraint systems that utilize one or more airbags to restrain an airplane seat occupant. Inflatable restraint systems are most commonly used in the premium cabin of commercial airplanes, particularly in first-class and other ultra-premium cabins that have "lie-flat" or oblique-facing seats. Inflatable restraint systems also are used in the economy cabin in certain circumstances, for example, in bulkhead rows to prevent an occupant's head from impacting the bulkhead. When required by FAA regulations, inflatable restraint systems provide airplane passengers with additional safety.

30. The market for the development, manufacture, and sale of inflatable restraint systems used on commercial airplanes was already highly concentrated prior to the acquisition. The only two suppliers of inflatable restraint systems used on commercial airplanes were AmSafe and SCHROTH. AmSafe and SCHROTH both offered structural mounted airbags, while AmSafe was the exclusive supplier of inflatable lapbelts. In recent years, SCHROTH had emerged as a strong competitor to AmSafe in the development of inflatable restraint technologies.

VI. ANTICOMPETITIVE EFFECTS

31. Mergers and acquisitions that reduce the number of competitors in highly concentrated markets are likely to substantially lessen competition. Before TransDigm's acquisition of SCHROTH, the markets for all restraint system types set forth above were highly concentrated. In each of these markets, SCHROTH and at most one other smaller firm competed

with AmSafe prior to the acquisition and AmSafe had at least a substantial—and often a dominant—share of the market. TransDigm's acquisition of SCHROTH therefore significantly increased concentration in already highly concentrated markets and is unlawful.

32. TransDigm's acquisition of SCHROTH also eliminated head-to-head competition between AmSafe and SCHROTH in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide. Prior to the acquisition, SCHROTH was a growing competitive threat to AmSafe and was challenging AmSafe on pricing and innovation.

33. In 2012, Takata acquired SCHROTH with the stated intention to "overtake AmSafe" in the markets for restraint systems used on commercial airplanes. AmSafe had traditionally dominated these markets with few, if any, significant competitors. Sensing a demand for new competitors and restraint technologies, SCHROTH began to compete with AmSafe on price and to invest heavily in research and development to create new restraint technologies.

34. Customers were already beginning to see the benefits of increased competition in these markets. Between 2012 and 2017, SCHROTH introduced several new innovative restraint products, challenging older products from AmSafe. These products included a new lightweight two-point lapbelt called the "Airlite," structural mounted airbag systems, and other advanced restraint systems. Prior to the acquisition, SCHROTH had already found customers—including major U.S. commercial airlines—for both its new Airlite belt and structural mounted airbag systems. With the introduction of these new products, potential customers also had begun qualifying SCHROTH as an alternative supplier to AmSafe and leveraging SCHROTH against AmSafe to obtain more favorable pricing. As new commercial airplanes were expected to be ordered, SCHROTH believed that its market share would continue to grow. Indeed, SCHROTH

expected that it would capture nearly 20% of the sales of restraint systems used on commercial airplanes by 2020, with most of the gains coming at the expense of AmSafe.

35. Prior to the acquisition, SCHROTH and AmSafe competed head-to-head on price. The resulting loss of a competitor indicates that the acquisition likely will result in significant harm from expected price increases. Furthermore, prior to the acquisition, AmSafe and SCHROTH also competed to develop new restraint technologies. The transaction eliminated that competition depriving customers of more innovative and life-saving restraint systems.

36. The transaction, therefore, is likely to substantially lessen competition in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide in violation of Section 7 of the Clayton Act.

VII. ENTRY

37. New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Entry into the development, manufacture, and sale of restraint systems used on commercial airplanes is costly, and unlikely to be timely or sufficient to prevent the harm to competition caused by the elimination of SCHROTH as an independent supplier.

38. Barriers to entry and expansion include certification requirements. Before a supplier may sell restraint systems, it must first obtain several authorizations, including a TSOA for the restraint system, a TSOA for the seat system, a supplemental type certificate, and, in certain cases, a special condition. These certification requirements discourage entry by imposing substantial sunk costs on potential suppliers with no guarantee that their restraint systems will be successful in the market. They also take substantial time—in some cases, years—to complete.

39. Barriers to entry and expansion also include the significant technical expertise required to design a restraint system that satisfies the certification requirements. The technical expertise required to design a restraint system is proportionate to the complexity of the restraint system design. However, while more advanced restraint systems such as inflatable restraint systems require more expertise than simpler belt-type restraint systems, even belt-type restraint systems require significant expertise to design the belt to be strong, lightweight, and functional.

40. Additional barriers to entry and expansion include economies of scale and reputation. Customers of restraint systems used on commercial airplanes require large volumes of restraint systems at low prices. Companies that cannot manufacture restraint systems at these volumes efficiently cannot compete effectively. Furthermore, customers of restraint systems used on commercial airplanes prefer established suppliers with known reputations.

VIII. VIOLATIONS ALLEGED

41. The acquisition of SCHROTH by TransDigm is likely to substantially lessen competition in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

42. The transaction will likely have the following anticompetitive effects, among others:

a. actual and potential competition between AmSafe and SCHROTH in the relevant markets will be eliminated;

b. competition generally in the relevant markets will be substantially lessened; and

c. prices in the relevant markets will likely increase and innovation will likely decline.

IX. REQUEST FOR RELIEF

43. The United States requests that this Court:

a. adjudge and decree TransDigm's acquisition of SCHROTH to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. order TransDigm to divest all assets acquired from Takata Corporation on February 22, 2017 relating to SCHROTH Safety Products GmbH and Takata Protection Systems and to take any further actions necessary to restore the market to the competitive position that existed prior to the acquisition;

c. award the United States its costs of this action; and

d. grant the United States such other relief as the Court deems just and proper.

Dated: December 21, 2017
Respectfully submitted,
FOR PLAINTIFF UNITED STATES:

_____/s/_____
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Assistant Attorney General
Antitrust Division

_____/s/_____
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *Plaintiff*, v. TRANSDIGM GROUP INCORPORATED *Defendant*.	Civil Action No.: 1:17-cv-2735 Judge: Amy Berman Jackson

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 22, 2017, Defendant TransDigm Group Incorporated ("TransDigm") acquired SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, "SCHROTH") from Takata Corporation ("Takata") for approximately $90 million. Due to the structure of the transaction, it was not required to be reported under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a.

The United States filed a civil antitrust Complaint on December 21, 2017, seeking the divestiture of SCHROTH and such other relief as necessary to restore the market to the competitive position that existed prior to the acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for the development,

manufacture, and sale of restraint systems used on commercial airplanes worldwide in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices for several types of restraint systems used on commercial airplanes and diminished innovation in the development of new airplane restraints.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, TransDigm is expected to divest all SCHROTH shares and assets acquired from Takata (the "Divestiture Assets") to Perusa Partners Fund 2, L.P. and SSP MEP Beteiligungs GmbH & Co. KG, a management buyout group composed of former SCHROTH executives. Under the terms of the Hold Separate, TransDigm will take steps to ensure that the Divestiture Assets are operated as a competitively independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by TransDigm, and that competition is maintained during the pendency of the ordered divestiture.

The United States and TransDigm have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendant and the Transaction

TransDigm is a Delaware corporation headquartered in Cleveland, Ohio. TransDigm operates as a holding company and owns over 100 subsidiaries. Through its subsidiaries, TransDigm is a leading global designer, manufacturer, and supplier of highly engineered airplane

components. TransDigm's fiscal year 2016 revenues were approximately $3.1 billion. TransDigm is the ultimate parent company of AmSafe Inc. ("AmSafe"), a Delaware corporation headquartered in Phoenix, Arizona. AmSafe develops, manufactures, and sells a wide range of restraint systems used on commercial airplanes. AmSafe had global revenues of approximately $198 million in fiscal year 2016.

Takata is a global automotive and aerospace parts manufacturer based in Japan.[1] Prior to the acquisition, Takata was the ultimate parent entity of SCHROTH Safety Products GmbH and Takata Protection Systems, Inc. SCHROTH Safety Products is a German limited liability corporation based in Arnsberg, Germany. Takata Protection Systems was a Colorado corporation based in Pompano Beach, Florida.[2] SCHROTH Safety Products and Takata Protection Systems develop, manufacture, and sell a wide range of restraint systems used on commercial airplanes. SCHROTH Safety Products and Takata Protection Systems collectively had approximately $37 million in revenue in fiscal year 2016.

On February 22, 2017, TransDigm acquired SCHROTH Safety Products and substantially all the assets of Takata Protection Systems for approximately $90 million. The transaction combined the two leading suppliers of restraint systems used on commercial airplanes worldwide. AmSafe is the dominant supplier of airplane restraint systems used on commercial airplanes; SCHROTH was its closest competitor and, indeed, its only meaningful competitor for certain types of restraint systems. As a result, the acquisition would lessen competition substantially in the development, manufacture, and sale of several types of restraint systems used on commercial airplanes. This acquisition is the subject of the Complaint and proposed Final Judgment filed today by the United States.

[1] Takata filed for bankruptcy protection on June 25, 2017.

B. Industry Overview

Commercial airplanes are fixed-wing aircraft used for scheduled passenger transport. Restraint systems used on commercial airplanes are critical safety devices that secure the occupant of a seat to prevent injury in the event of turbulence, collision, and impact.

Restraint systems used in the economy and premium cabins in commercial airplanes vary based on the airplane type, seat type, and seating configuration of the airplane. Restraint systems used on commercial airplanes come in two primary forms: (i) conventional belt systems with two or more belts or "points" that are connected to a central buckle; or (ii) inflatable systems with one or more airbags that may be installed in combination with a conventional belt system. The airbags can be installed either within the belt itself (called an "inflatable lapbelt") or in a structural monument (such as a seat back or wall) within the airplane (called a "structural mounted airbag").

Economy cabin seats typically require two-point lapbelts, though other restraint systems such as inflatable restraint systems may be necessary in limited circumstances to comply with Federal Aviation Administration ("FAA") safety requirements. Premium cabin seats come in many different seating configurations, and passenger restraint systems used in premium cabin seats vary as well. Premium cabin restraint systems include two-point lapbelts, three-point shoulder belts, and inflatable restraint systems. While two-point lapbelts and three-point shoulder belts are used widely throughout the premium cabins, the use of inflatable restraint systems is more common in first-class and other ultra-premium cabins. Flight crew seats on commercial airplanes require special restraint systems called "technical" restraints. Technical

[2] After the acquisition was completed, the Takata Protection Systems assets were incorporated as SCHROTH Safety Products LLC.

restraints are multipoint restraints with four or more belts that provide additional protection to the flight crew.

Restraint systems typically are purchased by commercial airlines and airplane seat manufacturers. Because certification of a restraint system is expensive and time consuming, once a restraint system is certified for a particular seat and airplane type, it is rarely substituted in the aftermarket for a different restraint system or supplier. Accordingly, competition between suppliers of restraint systems generally only occurs when a customer is designing a new seat or purchasing a new seat design, either when retrofitting existing airplanes or purchasing new airplanes.

C. Industry Regulation and Certification Requirements

All commercial airplanes must contain FAA-certified restraint systems on every seat installed on the airplane. The process for obtaining FAA certification is complex and involves several distinct stages.

Before selling a restraint system, a supplier of airplane restraint systems must first obtain a technical standard order authorization ("TSOA"). A TSOA certifies that the supplier's restraint system meets the minimum design requirements of the codified FAA Technical Standard Order ("TSO") for that object, and that the manufacturer has a quality system necessary to produce the object in conformance with the TSO. To obtain a TSOA for a restraint system, a supplier must test its restraint system for durability and other characteristics. Once a TSOA is issued for the restraint system, the supplier must then obtain a TSOA for the entire seat system—*i.e.*, the seat and belt combination. To obtain a TSOA for the seat system, the seat system must successfully complete dynamic crash testing to demonstrate that the seat system meets the FAA required g-force and head-injury-criteria safety requirements. Dynamic crash-testing is expensive and can be cost prohibitive to potential suppliers. Once a supplier obtains a TSOA for the seat system, it

must then obtain a supplemental type certificate, which certifies that the seat system meets the applicable airworthiness requirements for the particular airplane type on which it is to be installed.

Certain restraint system types such as inflatable restraint systems do not have a codified TSO and must instead satisfy a "special condition" from the FAA prior to manufacture and installation of the restraint system. In those circumstances, the FAA must first determine and then publish the terms of the special condition. Once the special condition is published, the supplier must then satisfy the terms of the special condition to install the object on an airplane.

D. Relevant Markets Affected by the Proposed Acquisition

AmSafe and SCHROTH compete across the full range of restraint systems used on commercial airplanes. As alleged in the Complaint, restraint systems are not generally interchangeable or substitutable for different restraint systems; restraint systems are designed for specific aircraft configurations and seat types. FAA regulations dictate which restraint system may be used for a particular aircraft configuration and seat type. In the event of a small but significant price increase for a given type of restraint system, commercial customers would not substitute another restraint system in sufficient numbers so as to render the price increase unprofitable. For these reasons, the Complaint alleges that each restraint system identified in the Complaint is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

As alleged in the Complaint, the relevant geographic market for the development, manufacture, and sale of restraint systems used on commercial airplanes is worldwide. Restraint systems are marketed internationally and may be sourced economically from suppliers globally.

The Complaint alleges likely harm in four distinct product markets for restraint systems used on commercial airplanes worldwide: (1) two-point lapbelts; (2) three-point shoulder belts; (3) technical restraints; and (4) inflatable restraint systems.

A two-point lapbelt is a restraint harness that connects two fixed belts to a single buckle and restrains an occupant at his or her waist. Two-point lapbelts are used on nearly every seat in the economy cabins of commercial airplanes; they also are regularly used in the premium cabins. A three-point shoulder belt is a restraint harness that restrains an occupant at his or her waist and shoulder. It consists of both a lapbelt component and shoulder belt (or sash) component. Three-point shoulder belts are widely used in the premium cabins of commercial airplanes where the seating configurations often necessitate the additional protection provided by three-point shoulder belts. Technical restraints are multipoint restraint harnesses (usually four or five points) that restrain an occupant at his or her waist and shoulders. Technical restraints consist of multiple belts that connect to a single fixed buckle—typically a rotary-style buckle. Technical restraints are used by the flight crew in commercial airplanes. The critical nature of the flight crew's responsibilities and the design of their seats necessitate the additional protections provided by technical restraints. Inflatable restraint systems, which include both inflatable lapbelts and structural mounted airbags, are restraint systems that utilize one or more airbags to restrain an airplane seat occupant. Inflatable restraint systems are most commonly used in the premium cabin of commercial airplanes, particularly in first-class and other ultra-premium cabins that have "lie-flat" or oblique-facing seats. Inflatable restraint systems also are used in the economy cabin in certain circumstances. When required by FAA regulations, inflatable restraint systems provide airplane passengers with additional safety.

E. Anticompetitive Effects

According to the Complaint, the acquisition reduced the number of competitors in already highly concentrated markets. Before TransDigm's acquisition of SCHROTH, the markets for all four restraint system types alleged in the Complaint were highly concentrated. In each of these markets, SCHROTH and at most one other smaller firm competed with AmSafe prior to the acquisition and AmSafe had at least a substantial—and often a dominant—share of the market. The Complaint alleges that TransDigm's acquisition of SCHROTH therefore significantly increased concentration in already highly concentrated markets and is likely to enhance market power.

In addition to increasing concentration, the Complaint alleges that TransDigm's acquisition of SCHROTH would eliminate head-to-head competition between AmSafe and SCHROTH in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide. According to the Complaint, prior to the acquisition, SCHROTH was a growing competitive threat to AmSafe and was challenging AmSafe on pricing and innovation. In 2012, Takata acquired SCHROTH with the intention of challenging AmSafe in the markets for restraint systems used on commercial airplanes. SCHROTH began to compete with AmSafe on price and to invest heavily in research and development to create new restraint technologies. Customers were already beginning to see the benefits of increased competition in these markets. Between 2012 and 2017, SCHROTH introduced several new innovative restraint products, challenging older products from AmSafe. Prior to the acquisition, SCHROTH had already found customers—including major U.S. commercial airlines—for its new products. With the introduction of these new products, potential customers also had begun qualifying SCHROTH as an alternative supplier to AmSafe and leveraging SCHROTH against AmSafe to obtain more favorable pricing. As new commercial airplanes were expected to be ordered, SCHROTH

believed that its market share would continue to grow. For all of these reasons, the Complaint alleges that the loss of SCHROTH as an independent competitor to AmSafe is likely to result in higher prices for several types of restraints used on commercial airplanes and diminished innovation worldwide in violation of Section 7 of the Clayton Act.

F. Barriers to Entry

As alleged in the Complaint, new entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Entry into the development, manufacture, and sale of restraint systems used on commercial airplanes is costly, and unlikely to be timely or sufficient to prevent the harm to competition caused by the elimination of SCHROTH as an independent supplier.

Barriers to entry and expansion include certification requirements. Before a supplier may sell restraint systems, it must first obtain several authorizations, including a TSOA for the restraint system, a TSOA for the seat system, a supplemental type certificate, and, in certain cases, a special condition. These certification requirements discourage entry by imposing substantial sunk costs on potential suppliers with no guarantee that their restraint systems will be successful in the market. They also take substantial time—in some cases, years—to complete.

Barriers to entry and expansion also include the significant technical expertise required to design a restraint system that satisfies the certification requirements. The technical expertise required to design a restraint system is proportionate to the complexity of the restraint system design. However, while more advanced restraint systems such as inflatable restraint systems require more expertise than simpler belt-type restraint systems, even belt-type restraint systems require significant expertise to design the belt to be strong, lightweight, and functional.

Additional barriers to entry and expansion include economies of scale and reputation. Customers of restraint systems used on commercial airplanes require large volumes of restraint

systems at low prices. Companies that cannot manufacture restraint systems at these volumes efficiently cannot compete effectively. Furthermore, customers of restraint systems used on commercial airplanes prefer established suppliers with known reputations.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by establishing a new, independent, and economically viable competitor in the development, manufacture, and sale of commercial airplane restraint systems worldwide.

A. Divestiture

Pursuant to the proposed Final Judgment, TransDigm must divest all of the SCHROTH assets it acquired from Takata pursuant to the February 2017 transaction. Specifically, Paragraph II(J) defines the Divestiture Assets to include all of the assets TransDigm acquired pursuant to the parties' Share and Asset Purchase Agreement and Share Transfer Agreement, including SCHROTH's owned real property and leases in Arnsberg, Germany, and Pompano Beach, Florida, and all other tangible and intangible assets that comprise SCHROTH.

Paragraph IV(A) of the proposed Final Judgment provides that TransDigm must divest the Divestiture Assets to Perusa Partners Fund 2, L.P. ("Perusa") and SSP MEP Beteiligungs GmbH & Co. KG ("MEP KG"), or to an alternative acquirer acceptable to the United States, within 30 days after all necessary regulatory approvals have been obtained from the Committee on Foreign Investment in the United States ("CFIUS") and the German Federal Ministry of Economic Affairs and Energy (the "*Bundesministerium für Wirtschaft und Energie*"), or 30 days after the Court's signing of the Hold Separate, whichever is later. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the assets can and will be operated by Perusa and MEP KG as a viable, ongoing business that can compete effectively in

the relevant markets. TransDigm must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with Perusa and MEP KG, or any other prospective purchaser.

The proposed Acquirer is a consortium between Perusa and certain members of the current management team of SCHROTH. Perusa is a diversified German private equity firm that invests in mid-sized companies. The SCHROTH management buyout group, which is acquiring an equity stake in SCHROTH through an investment entity (MEP KG), consists of 11 current SCHROTH executives, including several individuals who have had significant responsibilities related to SCHROTH's engineering, manufacture, and sale of airplane restraints. Under the terms of the divestiture agreement, Perusa will own a majority stake of SCHROTH.

In order to facilitate the Acquirer's immediate use of the Divestiture Assets, Paragraph IV(J) of the proposed Final Judgment provides the Acquirer with the option to enter into a transition services agreement with TransDigm, for a period of up to 12 months, to obtain information technology services and other such transition services that are reasonably necessary for the Acquirer to operate the Divestiture Assets. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional 6 months.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved with the SCHROTH business. Paragraph IV(D) of the proposed Final Judgment requires TransDigm to provide the Acquirer with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment, and provides that TransDigm will not interfere with any negotiations by the Acquirer to hire them. In addition, Paragraph IV(E) provides that for employees that elect employment with the Acquirer, TransDigm shall waive all noncompete and

nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which the employees would generally be provided if transferred to a buyer of an ongoing business. The Paragraph further provides, that for a period of two years from filing of the Complaint, TransDigm may not solicit to hire, or hire any such person who was hired by the Acquirer, unless such individual is terminated or laid off by the Acquirer or the Acquirer agrees in writing that TransDigm may solicit to hire that individual.

In the event that TransDigm does not accomplish the divestiture within the period provided in the proposed Final Judgment, Paragraph V(A) provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that TransDigm will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After its appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth its efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Firewalls

The proposed Final Judgment also contains a firewall provision intended to ensure that TransDigm's AmSafe subsidiary does not obtain SCHROTH's competitively sensitive information. During the U.S. Department of Justice, Antitrust Division's ("Antitrust Division") investigation of the acquisition, TransDigm entered into an asset preservation agreement with the United States to ensure that the SCHROTH assets were preserved and operated independently during the pendency of the investigation. As part of that agreement, the United States agreed to

allow three TransDigm executives to assist in the day-to-day management of SCHROTH on the condition that the executives would have no decision-making responsibility or participation in the business of AmSafe while they served in this capacity.[3] Section IX of the proposed Final Judgment includes a firewall provision to ensure that for the duration of the Final Judgment these three TransDigm employees do not share competitively sensitive information regarding SCHROTH that they obtained during the pendency of the investigation with individuals with responsibilities relating to AmSafe.

C. Notification

Section XII of the proposed Final Judgment requires TransDigm to provide notification to the Antitrust Division of certain proposed acquisitions not otherwise subject to filing under the Hart-Scott-Rodino Act, 15 U.S.C 18a (the "HSR Act"), and in the same format as, and per the instructions relating to the notification required under that statute. The notification requirement applies in the case of any direct or indirect acquisitions of any assets of or interest in any entity engaged in the development, manufacture, or sale of airplane restraint systems. Section XII further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated.

D. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph XV(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court.

[3] Under Section V(B) of the Hold Separate, those three TransDigm executives may continue to assist with the management of SCHROTH for the term of the Hold Separate.

Under the terms of this paragraph, TransDigm has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that TransDigm has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XV(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that TransDigm has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph XV(B) requires TransDigm to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

Finally, Section XVI of the proposed Final Judgment provides that the Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and TransDigm that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing

of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against TransDigm.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and TransDigm have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*.

Written comments should be submitted to:

Maribeth Petrizzi
Chief
Defense, Industrials, and Aerospace Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8700

Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against TransDigm. The United States could have continued the litigation and sought a divestiture of all SCHROTH assets acquired from Takata by TransDigm. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the development, manufacture, and sale of commercial airplane restraint systems worldwide. Indeed, the divestiture includes all SCHROTH assets acquired from Takata. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the

> court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. US Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[4]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree

[4] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004) *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (*quoting United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also US Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that

[5] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom*. *Maryland v. United States*, 460 U.S. 1001 (1983); *see also US Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also US Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should

have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also US Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the Court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[6] A court can make

[6] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D.Mo. 1977) ("Absent a showing of corrupt failure of the government to

its public interest determination based on the competitive impact statement and response to public comments alone. *US Airways*, 38 F. Supp. 3d at 76

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 21, 2017

Respectfully submitted,

/s/

JEREMY CLINE* (D.C. Bar #1011073)
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discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. TRANSDIGM GROUP INCORPORATED, *Defendant*.	Civil Action No.: 1:17-cv-2735 Judge: Amy Berman Jackson

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on December 21, 2017, the United States and Defendant, TransDigm Group Incorporated, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, TransDigm agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by TransDigm to assure that competition is substantially restored;

AND WHEREAS, the United States requires TransDigm to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, TransDigm has represented to the United States that the divestiture required below can and will be made and that TransDigm will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against TransDigm under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means Perusa and MEP KG, or another entity to whom TransDigm divests the Divestiture Assets.

B. "TransDigm" means Defendant TransDigm Group Incorporated, a Delaware corporation with its headquarters in Cleveland, Ohio, its successors and assigns, and its subsidiaries (including, but not limited to, SCHROTH Safety Products LLC, SCHROTH Safety Products GmbH, and AmSafe, Inc.), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "SCHROTH" means, collectively, SCHROTH Germany and SCHROTH U.S.

D. "SCHROTH Germany" means SCHROTH Safety Products GmbH, a German limited liability company headquartered in Arnsberg, Germany, its successors and assigns, and

its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "SCHROTH U.S." means SCHROTH Safety Products LLC, a Delaware limited liability company, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Share and Asset Purchase Agreement" means the Share and Asset Purchase Agreement among Takata Europe GmbH, Takata Protection Systems, Inc., Interiors In Flight, Inc., Takata Corporation, TransDigm, and TDG Germany GmbH, dated February 22, 2017.

G. "Share Transfer Agreement" means the Share Transfer Agreement among Takata Europe GmbH and TDG Germany GmbH, dated February 21, 2017.

H. "Perusa" means Perusa Partners Fund 2, L.P., a Guernsey limited partnership with its headquarters in St. Peter Port, Guernsey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. "MEP KG" means SSP MEP Beteiligungs GmbH & Co. KG, a German limited partnership with its headquarters in Munich, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. "Divestiture Assets" means all SCHROTH shares and assets acquired by TransDigm pursuant to the Share and Asset Purchase Agreement and Share Transfer Agreement including, but not limited to:

1. SCHROTH Germany's owned real property listed in Appendix A including, but not limited to, SCHROTH Germany's warehouses located at Im Ohl 14, 59757 Arnsberg, Germany;

2. SCHROTH Germany's leases for the real property listed in Appendix A including, but not limited to, SCHROTH Germany's headquarters located at Im Ohl 14, 59757 Arnsberg, Germany;

3. SCHROTH U.S.'s leases for the real property listed in Appendix A including, but not limited to, SCHROTH U.S.'s facility at 1371 SW 8th Street, Pompano Beach, Florida;

4. All tangible assets that comprise SCHROTH, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used by SCHROTH; all licenses, permits, certifications, and authorizations issued by any governmental organization (including, but not limited to, the Federal Aviation Administration and the European Aviation Safety Agency) or industry standard-setting body (including, but not limited to, the Society of Automotive Engineers and the International Organization for Standardization) relating to SCHROTH; all contracts, teaming arrangements, agreements, leases, commitments, and understandings, relating to SCHROTH, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to SCHROTH;

5. All intangible assets relating to the SCHROTH businesses, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related

documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to SCHROTH employees, customers, suppliers, agents, or licensees. Intangible assets also include all research data concerning historic and current research and development efforts relating to the development, manufacture, and sale of airplane restraint systems, designs of experiments, and the results of successful and unsuccessful designs, experiments, and testing.

K. "Airplane restraint system" means a belt, harness, or airbag used to restrain airplane passengers and crew.

III. Applicability

A. This Final Judgment applies to TransDigm, as defined above, and all other persons in active concert or participation with TransDigm who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, TransDigm sells or otherwise disposes of all or substantially all of its assets or of lesser business units that include the Divestiture Assets, TransDigm shall require the purchaser to be bound by the provisions of this Final Judgment. TransDigm need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. TransDigm is ordered and directed, within 30 calendar days after all necessary regulatory approvals have been obtained from the Committee on Foreign Investment in the United States ("CFIUS") and the German Federal Ministry of Economic Affairs and Energy (the

"*Bundesministerium für Wirtschaft und Energie*"), or 30 calendar days after the Court's signing of the Hold Separate Stipulation and Order in this matter, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Perusa and MEP KG, or to an alternative Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. TransDigm agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event TransDigm is attempting to divest the Divestiture Assets to an Acquirer other than Perusa and MEP KG, TransDigm promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. TransDigm shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestiture ordered by this Final Judgment, TransDigm shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. TransDigm shall make available such information to the United States at the same time that such information is made available to any other person.

D. TransDigm shall provide the Acquirer and the United States information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. TransDigm will not interfere with any negotiations by the Acquirer

to employ any TransDigm employee whose primary responsibility is the operation of the Divestiture Assets.

E. For any personnel involved in the operation of the Divestiture Assets that elect employment with the Acquirer, TransDigm shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which the relevant employees would generally be provided if transferred to a buyer of an ongoing business. For a period of two (2) years from the filing of the Complaint in this matter, TransDigm may not solicit to hire, or hire, any such person who was hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that TransDigm may solicit or hire that individual. Nothing in this paragraph shall prohibit TransDigm from maintaining any reasonable restrictions on the disclosure by any employee who accepts an offer of employment with the Acquirer of TransDigm's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to TransDigm's businesses and clients, and (3) unrelated to the Divestiture Assets.

F. TransDigm shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of SCHROTH; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. TransDigm shall warrant to the Acquirer that each asset will be operational on the date of sale.

H. TransDigm shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

I. TransDigm shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, TransDigm will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. At the Acquirer's option, and subject to approval by the United States, TransDigm shall enter a Transition Services Agreement for information technology services and other such transition services that are reasonably necessary for the Acquirer to operate the Divestiture Assets for a period of up to twelve months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six months. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions. Any amendments or modifications of the Transition Services Agreement may only be entered into with the approval of the United States, in its sole discretion.

K. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of developing, manufacturing, and selling airplane restraint systems. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of developing, manufacturing, and selling airplane restraint systems; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and TransDigm give TransDigm the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If TransDigm has not divested the Divestiture Assets within the time period specified in Paragraph IV(A), TransDigm shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of TransDigm any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. TransDigm shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by TransDigm must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of TransDigm pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to TransDigm and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and TransDigm are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to TransDigm and the United States.

E. TransDigm shall use its best efforts to assist the Divestiture Trustee in

accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and TransDigm shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. TransDigm shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To

the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. In the event TransDigm divests the Divestiture Assets to an Acquirer other than Perusa and MEP KG, within two (2) business days following execution of a definitive divestiture agreement, TransDigm or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify TransDigm. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from TransDigm, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture,

the proposed Acquirer, and any other potential Acquirer. TransDigm and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from TransDigm, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to TransDigm and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to TransDigm's limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by TransDigm under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

TransDigm shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, TransDigm shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. TransDigm shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Firewalls

A. TransDigm shall implement and maintain procedures to prevent the sharing by the TransDigm Executive Vice President currently assigned to SCHROTH, the TransDigm Controller currently assigned to SCHROTH, and the TransDigm Executive Vice President of Mergers & Acquisitions of competitively sensitive information from SCHROTH with personnel with responsibilities relating to AmSafe, Inc.

B. TransDigm shall, within thirty (30) calendar days of the Court's entry of the Hold Separate Stipulation and Order, submit to the United States a document setting forth in detail the procedures implemented to effect compliance with this Section. The United States shall notify TransDigm within ten (10) business days whether, in its sole discretion, it approves or rejects TransDigm's compliance plan.

C. In the event TransDigm's compliance plan is rejected, the reasons for the rejection shall be provided to TransDigm and TransDigm shall be given the opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether TransDigm's proposed compliance plan fulfills the requirements of Paragraph IX(A).

D. TransDigm may at any time submit to the United States evidence relating to the actual operation of any firewall in support of a request to modify any firewall set forth in this Section. In determining, in its sole discretion, whether it would be appropriate for the United States to consent to modify the firewall, the United States, shall consider the need to protect competitively sensitive information of SCHROTH and the impact the firewall has had on TransDigm's ability to efficiently manage AmSafe, Inc.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, TransDigm shall deliver to the United States an affidavit, signed by TransDigm's Chief Financial Officer and General Counsel, which shall describe the fact and manner of TransDigm's compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts TransDigm has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by TransDigm, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, TransDigm shall deliver to the United States an affidavit that describes in reasonable detail all actions TransDigm has taken and all steps TransDigm has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. TransDigm shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in TransDigm's earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. TransDigm shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to TransDigm, be permitted:

(1) access during TransDigm's office hours to inspect and copy, or at the option of the United States, to require TransDigm to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of TransDigm, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, TransDigm's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by TransDigm.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, TransDigm shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the

United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by TransDigm to the United States, TransDigm represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and TransDigm marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give TransDigm ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), TransDigm, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity, or management interest, in any entity engaged in the development, manufacture, or sale of airplane restraint systems during the term of this Final Judgment.

B. Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about airplane restraint systems. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable

instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, TransDigm shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

TransDigm may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. TransDigm agrees that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may

establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and TransDigm waives any argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that TransDigm has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. TransDigm agrees to reimburse the United States for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

XVI. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and TransDigm that the divestiture has been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XVII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

APPENDIX A: Real Property
(Owned and Leased)

SCHROTH U.S. Leased Real Property

Facility Name	Address	Type of Facility
Pompano Beach	1371 SW 8th Street, Pompano Beach, FL	Manufacturing Plant, Office, and Warehouse

SCHROTH Germany Leased Real Property

Facility Name	Address	Type of Facility
Headquarters "Im Ohl"	Im Ohl 14, 59757 Arnsberg, Germany	Manufacturing Plant and Office (Headquarters)
Parking Area "Im Ohl"	Im Ohl 14, 59757 Arnsberg, Germany	Parking Area

SCHROTH Germany Owned Real Property

Facility Name	Address	Type of Facility
Warehouse "Im Ohl"	Im Ohl 14, 59757 Arnsberg, Germany; Land Register of Neheim-Husten of the local court of Arnsberg; Page 13024; Plot 5, Parcel 390	Warehouse
Warehouse "Im Ohl"	Im Ohl 14, 59757 Arnsberg, Germany; Land Register of Neheim-Husten of the local court of Arnsberg; Page 9777; Plot 5, Parcel 88	Warehouse

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